APPEAL NO. 171712
FILED SEPTEMBER 12, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on June 13, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from (Dr. G) on October 5, 2016, did not become final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); (2) the compensable injury of (date of injury), does not extend to lumbar radiculopathy or lumbar spondylosis at L3-5; (3) the appellant (claimant) reached MMI on April 21, 2016; and (4) the claimant's IR is 5%.

The claimant appealed the hearing officer's determinations regarding extent of the compensable injury, MMI and IR, contending that the hearing officer's determinations were contrary to the preponderance of the evidence. The appeal file does not contain a response from the respondent (carrier).

The hearing officer's determination that the first certification of MMI and assigned IR from Dr. G on October 5, 2016, did not become final under Section 408.123 and Rule 130.12 was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed as reformed.

Section 410.203(b) was amended effective September 1, 2011, to allow the Appeals Panel to affirm the decision of a hearing officer as prescribed in Section 410.204(a-1). Section 410.204(a) provides, in part, that the Appeals Panel may issue a written decision on an affirmed case as described in subsection (a-1). Subsection (a-1) provides, in part, that the Appeals Panel may only issue a written decision in a case in which the panel affirms the decision of a hearing officer if the case: (1) is a case of first impression; (2) involves a recent change in law; or (3) involves errors at the [CCH] that require correction but do not affect the outcome of the hearing. This case is a situation that requires correction but does not affect the outcome of the hearing.

The claimant testified that he was injured when he missed a rung while descending a ladder and fell, landing on his back. The parties stipulated that the claimant sustained a compensable injury on (date of injury).

**EXTENT OF INJURY**

The hearing officer's determination that the compensable injury of (date of injury), does not extend to lumbar radiculopathy or lumbar spondylosis at L3-5 is supported by sufficient evidence and is affirmed.

## FINDINGS OF FACT

The parties stipulated on the record that the Texas Department of Insurance, Division of Workers' Compensation (Division)-selected designated doctor, (Dr. P), certified that the claimant has not yet reached MMI. However, Finding of Fact No. 1.E. incorrectly states the parties stipulated as follows:

> E. The Division-selected designated doctor, [(Dr. C)], certified that [the] [c]laimant reached [MMI] on June 30, 2016, with an [IR] of 8%.

The designated doctor in this case is Dr. P and there is no Report of Medical Evaluation (DWC-69) in evidence from Dr. C certifying that the claimant reached MMI on June 30, 2016, with an 8% IR. We reform Finding of Fact No. 1.E. to correspond to the stipulation actually made by the parties at the CCH and Dr. P's DWC-69 in evidence as follows:

> E. The Division-selected designated doctor, Dr. P, certified that the claimant has not yet reached MMI.

The parties further stipulated on the record that Dr. G, a doctor selected by the carrier, certified that the claimant reached MMI on March 29, 2016[1], with an IR of 5%. However, Finding of Fact No. 1.F. incorrectly states the parties stipulated as follows:

> F. [(Dr. M)] a doctor referred by the treating doctor, certified that [the] [c]laimant reached [MMI] on April 21, 2016, with an [IR] of 17%.

We reform Finding of Fact No. 1.F. to correspond to the stipulation actually made by the parties at the CCH and Dr. G's DWC-69 in evidence as follows:

> F. Dr. G, a doctor selected by the carrier, certified that the claimant reached MMI on March 29, 2016, with an IR of 5%.

The parties further stipulated on the record that the carrier has accepted as compensable a lumbar sprain/strain. However, Finding of Fact No. 1.G. incorrectly recites the parties' stipulation as follows:

[1] We note that in the Discussion section of her decision, the hearing officer mistakenly states that Dr. G certified that the claimant reached MMI on April 21, 2016.

G. [The] [c]arrier has accepted as compensable a left femoral fracture, crush injury to the left lower extremity, left forearm fracture, and left lower extremity CRPS.

We reform Finding of Fact No. 1.G. to correspond to the stipulation actually made by the parties at the CCH and the medical evidence admitted as follows:

G. The carrier has accepted as compensable a lumbar sprain/strain.

Finally, the parties also stipulated on the record that (Dr. R), a doctor selected by the carrier, certified that the claimant reached MMI on April 21, 2016, with an IR of 5% and that Dr. P was also the Division-appointed designated doctor for the purpose of extent of injury. However, the hearing officer failed to incorporate these stipulations into her Finding of Fact No. 1 as agreed by the parties at the CCH. We therefore reform the hearing officer's decision and add the following as Finding of Fact Nos. 1.H. and 1.I.:

Finding of Fact No. 1.H.: Dr. R, a doctor selected by the carrier, certified that the claimant reached MMI on April 21, 2016, with an IR of 5%.

Finding of Fact No. 1.I.: Dr. P was also the Division-appointed designated doctor for the purpose of extent of injury.

**MMI/IR**

The hearing officer's determination that the claimant reached MMI on April 21, 2016, with a 5% IR is supported by sufficient evidence and is affirmed.

**SUMMARY**

We affirm the hearing officer's determination that the compensable injury of (date of injury), does not extend to lumbar radiculopathy or lumbar spondylosis at L3-5.

We reform Finding of Fact No. 1.E. to state that the parties stipulated that the Division-selected designated doctor, Dr. P, certified that the claimant has not yet reached MMI to correspond to the stipulation actually made by the parties at the CCH and Dr. P's DWC-69 in evidence.

We reform Finding of Fact No. 1.F. to state that the parties stipulated that Dr. G, a doctor selected by the carrier, certified that the claimant reached MMI on March 29, 2016, with an IR of 5% to correspond to the stipulation actually made by the parties at the CCH and Dr. G's DWC-69 in evidence.

We reform Finding of Fact No. 1.G. to state that the parties stipulated that the carrier has accepted as compensable a lumbar sprain/strain to correspond to the stipulation actually made by the parties at the CCH and the medical evidence admitted.

We reform the hearing officer's decision to add the following as Finding of Fact Nos. 1.H. and 1.I.:

> Finding of Fact No. 1.H.: Dr. R, a doctor selected by the carrier, certified that the claimant reached MMI on April 21, 2016, with an IR of 5%.
>
> Finding of Fact No. 1.I.: Dr. P was also the Division-appointed designated doctor for the purpose of extent of injury.

We affirm the hearing officer's determination that the claimant reached MMI on April 21, 2016, and that the claimant's IR is 5%.

The true corporate name of the insurance carrier is **SERVICE LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH KELLY-GRAY, PRESIDENT**
**6907 CAPITOL OF TEXAS HIGHWAY, NORTH**
**AUSTIN, TEXAS 78755**.

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge